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9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12
Plaintiff,
13
v.
14 ALEJANDRO CHAVARRIA,
15
Defendant.
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CASE NO. 1:20-CR-00193-NONE-SKO

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
FINDINGS AND ORDER

DATE: January 20, 2021
TIME: 1:00 p.m.
COURT: Hon. Sheila K. Oberto

17 This case was previously set for a status conference on January 20, 2021. By stipulation, the
18 parties now move to continue the status conference to April 21, 2021, and to exclude time between
19 January 20, 2021 and April 21, 2021.

20 On April 17, 2020, this Court issued General Order 617, which suspends all jury trials in the
21 Eastern District of California scheduled to commence before June 15, 2020, and allows district judges to
22 continue all criminal matters to a date after June 1. This and previous General Orders were entered to
23 address public health concerns related to COVID-19.

24 Although the General Orders address the district-wide health concern, the Supreme Court has
25 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive
26 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.
27 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no
28 exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at

509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally or in writing”).

Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

In light of the societal context created by the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

¹ The parties note that General Order 612 acknowledges that a district judge may make “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D. Cal. March 18, 2020).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant's counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for status on January 20, 2021.

2. By this stipulation, defendant now moves to continue the status conference until April 21, 2021, and to exclude time between January 20, 2021, and April 21, 2021, under Local Code T4.

3. The parties agree and stipulate, and request that the Court find the following:

a) The government has represented that the discovery associated with this case includes investigative reports and related documents, photographs, criminal history reports, and court documents. All of this discovery has been either produced directly to counsel and/or made available for inspection and copying.

b) Due to the public health emergency, counsel for the defendant has limited access to his client, who is in pre-trial detention. Counsel for defendant requires additional time to review discovery provided by the government, conduct additional investigation regarding the charges, consult with his client, and discuss potential resolution with the government and his client.

c) Counsel for defendant believes that failure to grant the above-requested continuance would deny him/her the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

d) The government does not object to the continuance.

e) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act.

f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of January 20, 2021 to April 21, 2021, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best

1 interest of the public and the defendant in a speedy trial.

2 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
3 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
4 must commence.

5 IT IS SO STIPULATED.

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7 Dated: January 12, 2021

8 MCGREGOR W. SCOTT
United States Attorney

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10 /s/ KATHERINE E. SCHUH
KATHERINE E. SCHUH
Assistant United States Attorney

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12 Dated: January 12, 2021

13 /s/ ERIC KERSTEN
ERIC KERSTEN
Counsel for Defendant
ALEJANDRO CHAVARRIA

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16 **FINDINGS AND ORDER**

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18 IT IS SO ORDERED.

19 Dated: **January 13, 2021**

20 */s/ Sheila H. Oberto*
UNITED STATES MAGISTRATE JUDGE